HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.21601 OF 2006

-

Between:

Bank of India,
rep. by Chief Manager,
Asset Recovery Branch, Hyderabad.

..... Petitioner

AND

The Debts Recovery Appellate Tribunal,
Chennai & others

.....Respondents

:: O R D E R ::

Counsel for the Petitioner : Shri S. Surya Prakasa Rao

18th October, 2006

Per G.S.SINGHVI, C.J.

In this petition, the petitioner has prayed for quashing order dated 28-8-2006 passed by Debts Recovery Appellate Tribunal, Chennai Bench (for short, 'the Appellate Tribunal') in I.A.No.350 of 2006 in M.A.No.176 of 2005.

The Facts:

In the year 1987, the petitioner bank sanctioned loan to V.M. Finance & Leasing Company. For securing repayment of the loan, Smt. V.Sharada, sole Proprietor of the borrower mortgaged the office premises situated in Plot No.1268, Road No.13A, Jubilee Hills, Hyderabad and shops bearing Nos.201/1 to 201/19 situated on the second floor of Anasuya Commercial Complex, Himayathnagar, Hyderabad. Respondent No.3 namely, V.Chakrapani, who is the husband of Smt.V.Sharada, stood as guarantor and executed guarantee documents. On account of the borrower's failure to repay the instalments of loan, the bank filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act') for recovery of Rs.23,39,191.23p. in Bangalore Bench of the Debts Recovery Tribunal (for short, 'the Tribunal'). By an order dated 23-10-1998, the Tribunal allowed the application filed by the petitioner. As a sequel to this, recovery certificate dated 9-4-2002 was issued in favour of the petitioner.

In the meanwhile, the petitioner filed O.S.No.796 of 1997 in the Court of Vth Senior Civil Judge, City Civil Court, Hyderabad against respondent No.3 and Smt.V.Sharada. During the pendency of that suit, respondent No.3 is said to have approached the petitioner for compromise, which agreed to compromise both the cases. However, respondent No.3 failed to repay the amount due to the bank. Therefore, after some correspondence, the

petitioner, vide its letter dated 10-4-2001 revoked the compromise and obtained recovery certificate from Hyderabad Bench of the Tribunal.

In the meanwhile, respondent No.3 filed M.A.No.111 of 2002 for setting aside ex parte decree dated 23-10-1998 passed by the Bangalore Bench of the Tribunal in O.A.No.657 of 1997. He also filed I.A.No.1727 of 2002 for condonation of 1063 days delay in filing of the application. The Hyderabad Bench of the Tribunal condoned the delay, but dismissed M.A.No.111 of 2002 on merits. Review petition filed by respondent No.3 was returned by Hyderabad Bench of the Tribunal on the ground that the same was not maintainable. Respondent No.3 then filed an appeal against order dated 19-5-2003 passed by Hyderabad Bench of the Tribunal. The same was registered as M.A.No.176 of 2005. He also filed I.A.No.146 of 2005 for condonation of 672 days delay. By an order dated 21-11-2005, the Appellate Tribunal condoned the delay and directed respondent No.3 to deposit Rs.10,00,000/- with a stipulation that if he fails to do so, the appeal will be deemed to have been dismissed. After some time, respondent No.3 filed I.A.No.383 of 2005 for extension of time up to 31-12-2005 and I.A.No.384 of 2005 for reducing the quantum of amount to be deposited. The Appellate Tribunal allowed the first application and extended the time for deposit of Rs.10,00,000/-, but dismissed the second one. Another application filed by respondent No.3, which was registered as I.A.No.385 of 2005 for issue of a direction to the petitioner to credit the payment of Rs.10,00,000/- under RBI-OTS scheme was also dismissed by the Appellate Tribunal as not maintainable. He then filed Writ Petition No.27351 of 2005 questioning the legality of order dated 21-11-2005. The same was

dismissed by the Division Bench of this Court vide its order dated 26-12-2005 and respondent No.3 was directed to deposit Rs.10,00,000/- by 31-12-2005. Thereafter, respondent No.3 issued cheque of Rs.10,00,000/- drawn on UTI Bank, but instructed the petitioner not to appropriate the amount towards the ex parte decree passed by the Tribunal. After some time, he filed I.A.No.350 of 2006 in M.A.No.176 of 2005 for clarification of order dated 21-11-2005. That application of respondent No.3 was allowed by the Appellate Tribunal on 28-8-2006 and respondent No.3 was directed to deposit Rs.10,00,000/- on or before 4-9-2006.

Feeling aggrieved by the last mentioned order, the petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution.

Sri S. Suryaprakasa Rao, learned counsel for the petitioner vehemently argued that in the garb of entertaining an application filed by respondent No.3 for clarification of order dated 21-11-2005, the Appellate Tribunal could not have reviewed that order and granted further time to respondent No.3 to deposit Rs.10,00,000/- ignoring the highly contumacious conduct exhibited by him by not paying the decretal amount for a period of eight years. Learned counsel emphasized that on account of non-deposit of Rs.10,00,000/- in terms of order dated 21-11-2005, the appeal preferred by respondent No.3 stood automatically dismissed and in the guise of deciding clarification application, the Appellate Tribunal could not have revived the appeal. He then submitted that the case set up by respondent No.3 is based on falsehood and the Appellate Tribunal committed a jurisdictional error by entertaining the application filed for clarification of order dated 21-11-2005.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to interfere with the order under challenge. During the course of hearing, learned counsel for the petitioner fairly admitted that in compliance of order dated 28-8-2006 passed by the Appellate Tribunal, respondent No.3 has deposited Rs.10,00,000/-. This shows that, at least, this time, respondent No.3 has not violated the order passed by the Appellate Tribunal. Therefore, notwithstanding an apparently contumacious conduct exhibited by respondent No.3 in the past, we are not inclined to interfere with the discretion exercised by the Appellate Tribunal to extend the time specified in order dated 21-11-2005 for deposit of Rs.10,00,000/-.

Technically, the argument of Sri S.Suryaprakasa Rao that the appeal filed by respondent No.3 will be deemed to have been dismissed on account of his failure to deposit Rs.10,00,000/- on or before 23-12-2005 may be correct, but it is not possible to agree with the learned counsel that the Appellate Tribunal did not have the jurisdiction to extend the time specified in order dated 21-11-2005. The provisions contained in the Act do not impose any bar against entertaining of application for extension of time specified in the orders passed by the Tribunal or the Appellate Tribunal. Therefore, even though the Appellate Tribunal appears to have granted extraordinary indulgence to respondent No.3, we are not inclined to interfere with the discretion exercised by it to extend the time fixed for deposit of Rs.10,00,000/- and deny opportunity to respondent No.3 to make his submissions on the merits of the case.

For the reasons stated above, the writ petition is dismissed.

G.S.SINGHVI, C.J.

18th October, 2006

C.V. NAGARJUNA REDDY, J.

ARS